United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 10-375**
	)	**Issued: December 13, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Duluth, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 23, 2009 appellant filed an appeal from an October 30, 2009 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to disability compensation for the period August 27, 2004 to September 17, 2006.

On appeal, appellant contends that the report of Dr. James A. Maultsby, a Board-certified orthopedic surgeon, who provided a second opinion evaluation for the Office, was untrue because he twisted what she told him.

FACTUAL HISTORY

On February 16, 1999 appellant, then a 56-year-old temporary relief carrier, sustained an employment-related left anterior cruciate ligament tear when she twisted her knee while delivering mail. She resigned from employment on April 22, 1999. On November 30, 1999

appellant underwent arthroscopic repair of the left knee. On January 8, 2003 she underwent a total left knee replacement.

By decision dated September 10, 2003, the Office terminated appellant's compensation benefits, effective October 5, 2003, on the grounds that she refused an offer of suitable employment. In a merit decision dated August 12, 2004, it denied modification of the September 10, 2003 decision.

On August 24, 2004 appellant fell down steps when her knee gave out, injuring her left upper extremity. In an emergency room evaluation, Dr. Robert A. Barefoot, Board-certified in family medicine, diagnosed status post fall with musculoskeletal pain, wrist sprain and abrasions.

On March 8, 2005 appellant's claim was expanded to include ankylosis of the left lower leg and a left shoulder, upper arm sprain. In a May 24, 2005 report, Dr. Thomas J. Chambers, a Board-certified orthopedic surgeon, noted that she had a rotator cuff tear, as demonstrated by arthrogram. He also advised that appellant would need revision of her total knee replacement. Appellant submitted treatment notes dated September 1, 2004 to April 19, 2005 from Erin Kirby, a physician's assistant.

By decision dated October 6, 2005, the Board found that the Office did not meet its burden of proof to terminate appellant's compensation benefits based on her refusal of suitable work and reversed the August 12, 2004 decision.[1] The law and facts of the previous Board decision are incorporated herein by reference.

Appellant was returned to the periodic compensation rolls, effective September 18, 2006, when she underwent revision of the left total knee replacement.

In a February 8, 2007 decision, the Office determined appellant's wage-earning capacity based on 10 hours of weekly federal employment and 20 hours of private employment, with an average weekly wage of $240.00, for an 80 percent wage-earning capacity. Appellant received compensation for the period October 5, 2003 through September 17, 2006 based on that rate.[2]

Appellant, through her attorney, timely requested a hearing. In a March 7, 2008 decision, an Office hearing representative affirmed the February 8, 2007 decision with regards to wage-loss compensation for the period October 5, 2003 until August 27, 2004 and found the case not in posture for the period after her fall that day, which represented a material change in the nature and extent of her injury-related condition.

The Office referred appellant for examination by Dr. James A. Maultsby, a Board-certified orthopedic surgeon. In a May 14, 2008 report, Dr. Maultsby reviewed the medical records and statement of accepted facts and noted appellant's chief complaint of a painful left shoulder that limited her activity. He reported that she had right wrist surgery on April 15, 2008, unrelated to her work injuries that prevented the performance of a functional capacity evaluation.

[1] Docket No. 05-258 (issued October 6, 2005).

[2] On February 21, 2007 appellant underwent arthroscopic repair of a left shoulder rotator cuff tear.

Dr. Maultsby provided findings on physical examination. He diagnosed degenerative disc disease of multiple joints, post anterior cruciate ligament tear with repair and total knee replacement times two, postsurgery on her right wrist and left shoulder rotator cuff and labral tear. Dr. Maultsby advised that there was no increase in disability due to her left shoulder condition and that no further treatment was needed.

By decision dated June 10, 2008, the Office denied appellant's claim for total disability compensation for the period August 27, 2004 through September 17, 2006.

Appellant, through her attorney, timely requested a hearing and submitted a January 31, 2008 report from Dr. Chambers, who provided physical examination findings and diagnosed right rotator cuff tendinitis secondary to overuse, left chronic rotator cuff tear and left knee instability. Dr. Chambers advised that appellant could not lift anything over her head.[3] On August 5, 2008 he noted right shoulder arthrogram findings of a supraspinatus tear and recommended surgical repair. At the October 22, 2008 hearing, appellant testified that the surgery on her left shoulder was not successful and described her current medical condition. In a December 9, 2008 report, Dr. Chambers advised that he had treated her consistently from the time of her August 2004 fall for a wrist fracture and irreparable shoulder cuff tear. He opined that appellant had been disabled throughout that period of time, and at the present could perform only very light desk-type work.

In a January 14, 2009 decision, an Office hearing representative affirmed the June 10, 2008 decision.

In February 2009, the Office again referred appellant to Dr. Maultsby, who obtained a February 17, 2009 functional capacity evaluation that demonstrated self-limiting behavior but advised that she had the ability to perform activities in the light range. In a February 17, 2009 report, Dr. Maultsby reviewed the functional capacity evaluation and provided physical examination findings. He diagnosed degenerative joint disease at multiple locations, post anterior cruciate ligament repair; post total knee replacement, postsurgery on her right wrist tendon. Dr. Maultsby found that appellant had reached maximum medical improvement and had the physical ability to work eight hours a day in accordance with the functional capacity evaluation light range.

On March 16, 2009 appellant, through her attorney, requested reconsideration and submitted a January 29, 2009 treatment note from Dr. Chambers, who advised that her left knee was doing well after surgery and that her left shoulder was not doing well. Dr. Chambers diagnosed a right rotator cuff tear and recommended surgical repair. In an undated report, he advised that the left shoulder condition was a result of the August 27, 2004 fall and that the degenerative joint disease of the left shoulder was a direct result of her massive rotator cuff tear.

In a merit decision dated April 13, 2009, the Office denied modification of the June 10, 2008 decision.

[3] Appellant also submitted evidence previously of record.

On September 16, 2009 appellant requested reconsideration and submitted evidence previously of record together with a July 30, 2009 report from Donald Jay McCauley, a physician's assistant. By decision dated October 30, 2009, the Office denied modification of the prior decisions.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[4] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[5] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act.[6] Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[7] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[8]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[9]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[10] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[6] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[7] *Donald E. Ewals*, 51 ECAB 428 (2000).

[8] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

[9] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12] It is well established that medical conclusions unsupported by rationale are of diminished probative value.[13]

ANALYSIS

Appellant was paid compensation for the period August 27, 2004 to September 17, 2006, based on her capacity to earn wages as a part-time postal employee and in part-time private employment. She received wage loss for total disability on September 18, 2006 and claimed total disability compensation for the period August 27, 2004 to September 17, 2006. The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for this period.

The medical evidence is insufficient to establish that appellant was totally disabled for the period August 27, 2004 to September 17, 2006 due to the accepted conditions.

Appellant asserted on appeal that Dr. Maultsby's reports were untrue because he mischaracterized what she told him. The Board, however, notes that in a May 14, 2008 and February 17, 2009 reports, Dr. Maultsby, an Office referee physician, did not specifically comment on the period of claimed disability from August 27, 2004 to September 17, 2006. His opinion, therefore, is not relevant to appellant's claim for disability compensation for this period.

The medical evidence relevant to the claimed period of disability includes a treatment notes from Erin Kirby, a physician's assistant. A physician's assistant, however, is not a "physician" as defined under the Act and their opinions are of no probative value.[14] Dr. Barefoot did not provide an opinion regarding appellant's ability to work in his August 24, 2004 emergency room report. As noted medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship,[15] Dr. Barefoot's report is insufficient to establish any period of total disability. Dr. Chambers did not comment on appellant's disability status until December 9, 2008 when he generally advised that she had been disabled since her fall in August 2004. At that time appellant had been on the periodic rolls for more than two years. In subsequent reports, Dr. Chambers did not further address whether she was disabled for the period in question. He did not profess any knowledge of appellant's specific job duties or provide a rationalized explanation as to why she could not work for the claimed period.[16]

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[14] *E.H.*, 60 ECAB ____ (Docket No. 08-1862, issued July 8, 2009).

[15] *Willie M. Miller*, 53 ECAB 697 (2002).

[16] Dr. Maultsby, who provided second opinion evaluations for the Office in May 2008 and February 2009, did not specifically comment on the period of claimed disability.

The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[17] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[18]

As there is no rationalized medical evidence contemporaneous with the period of claimed disability, appellant failed to meet her burden of proof to establish entitlement to total disability compensation for the period August 27, 2004 to September 17, 2006.[19]

CONCLUSION

The Board finds that appellant did not establish that she was entitled to additional wage-loss compensation for the period August 27, 2004 to September 17, 2006.

[17] *See Albert C. Brown*, 52 ECAB 152 (2000).

[18] *A.D.*, 58 ECAB 149 (2006).

[19] *See Tammy L. Medley, supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board